

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF YOLO

**FILED**  
**YOLO SUPERIOR COURT**

OCT 09 2019  
By [Signature]  
Deputy

DAVIS COALITION FOR SENSIBLE  
PLANNING,

Petitioner,

v.

CITY OF DAVIS,

Respondent;

NISHI GATEWAY, LLC, a California  
Limited Liability Company,

Real Party in Interest.

Case No.: CVPT-18-433

**ORDER AFTER HEARING**

Hearing: October 8, 2019

Time: 9:00 am

Department: 8

At the above-captioned date and time, this writ of mandate was heard.

The Petitioner was represented by counsel Patrick Soluri and Nick Sweeney.

Respondent was represented by counsel Harriet Steiner.

The Real Party in Interest was represented by counsels Elizabeth Pollock and Sabrina  
Teller.

After hearing oral argument, and reviewing the pleadings filed in this matter, the Court  
hereby confirms its tentative ruling, with augmentation to the tentative ruling underlined.

The attached tentative ruling, incorporated herein as modified, now becomes the final  
order of the Court.

**IT IS SO ORDERED.**

DATED: October 9, 2019

[Signature]  
Hon. Peter M. Williams  
Judge of the Superior Court

## TENTATIVE RULING

**Case:** Davis Coalition for Sensible Planning v. City of Davis  
**Case No.** CV PT 18-433  
**Hearing Date:** October 8, 2019 **Department** Eight **9:00 a.m.**

Respondent City of Davis and Real Party in Interest Nishi Gateway, LLC's joint request for judicial notice is **GRANTED**. (Evid. Code, §§ 452, 453.)

Petitioner Davis Coalition for Sensible Planning's request for judicial notice is **GRANTED**. (Evid. Code, §§ 452, 453.)

Petitioner's petition for writ of mandate is **DENIED**. (Code Civ. Pro., § 1085; Pub. Resources Code, § 21166; 14 Cal. Code Regs., § 15162, subd. (a).) The Court finds as follows:

1. The project provides the amount of affordable housing as required by the City's affordable housing ordinance. (Ordinance Nos. 2523, 2525; Resolution No. 18-023.) Even if Ordinance No. 2525 was effective after the affordable housing plan was approved, petitioner has not shown that the City's action was "arbitrary, capricious or entirely lacking in evidentiary support," as Resolution No. 18-023 and Ordinance No. 2523 were expressly conditioned on the outcome of the election. (*City of Arcadia v. State Water Resources Control Bd.* (2006) 135 Cal.App.4th 1392, 1409.)
2. Petitioner has standing to bring a writ of mandate for unlawful discrimination, based on the public interest exception. (*Friends of Oceano Dunes, Inc. v. San Luis Obispo County Air Pollution Control Dist.* (2015) 235 Cal.App.4th 957, 962.) Petitioner does not have another plain, speedy, and adequate remedy available to bring such a claim. (*Phelan v. Superior Court in and for City and County of San Francisco* (1950) 35 Cal.2d 363, 366.) However, petitioner has failed to establish that the project unlawfully discriminates based on familial status. To the extent petitioner is proceeding with a facial challenge, that challenge fails because the affordable housing plan only designates a minimum number of affordable beds that must be set aside for eligible students. To the extent that petitioner challenges the affordable housing plan on a disparate impact theory, petitioner has failed to meet its burden. (*Reinhart v. Lincoln County* (10th Cir. 2007) 482 F.3d 1225, 1229 ["plaintiffs must show that a specific policy caused a significant disparate effect on a protected group."].)
3. Petitioner has not shown that the City failed to proceed in a manner required by law. (*American Canyon Community United for Responsible Growth v. City of American Canyon* (2006) 145 Cal.App.4th 1062, 1081-1083.) Petitioner does not cite a portion of the administrative record where evidence was presented that the proposed developments would cause a new or substantially different cumulative impact from the EIR. (*Ibid.*; 14 Cal. Code Regs., § 15162, subd. (a).)
4. Petitioner has failed to establish that the City's decision to prepare an addendum, regarding cumulative impacts, is not supported by substantial evidence. (*Committee for Re-Evaluation of T-Line Loop v. San Francisco Municipal Transportation Agency* (2016) 6 Cal.App.5th 1237, 1247 ["T-Line Loop"] ["A party challenging an agency's decision under section 21166 has the burden to demonstrate that the agency's decision is not supported by substantial evidence and is therefore improper."].)

5. Petitioner has failed to establish that the City's decision to prepare an addendum, regarding transportation impacts, is not supported by substantial evidence. (*T-Line Loop, supra*, 6 Cal.App.5th at p. 1247.) Petitioner has not provided sufficient legal authority that City must analyze traffic impacts or disclose modified delay figures in the addendum, based on revisions to the project. The City did not improperly rely on the general plan in the addendum. (*East Sacramento Partnerships for a Livable City v. City of Sacramento* (2016) 5 Cal.App.5th 281, 303 ["the EIR fails to explain or provide substantial evidence to support the finding of no significant traffic impact at these intersections."], emphasis added; *Citizens Against Airport Pollution v. City of San Jose* (2014) 227 Cal.App.4th 788, 805 [distinguishing prior cases because "neither one involved an addendum to an EIR."].)
6. Petitioner has not provided new information indicating that the project would cause an exacerbation of existing environmental hazards or conditions. (*California Building Industry Association v. Bay Area Air Quality Management District* (2015) 62 Cal.4th 369, 377–378 ["it is the project's impact on the environment—and not the environment's impact on the project—that compels an evaluation of how future residents or users could be affected by exacerbated conditions."].)

OCT 09 2019

SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF YOLO  
1000 MAIN STREET  
WOODLAND, CA 95695

By   
Deputy

CASE TITLE: DAVIS COALITION FOR SENSIBLE PLANNING VS. CITY OF DAVIS

CASE NO: CVPT-18-433

I, the undersigned, certify under penalty of perjury that I am a Deputy Clerk of the above-entitled Court and not a party to the within-entitled action; that on October 09, 2019 I served true and correct copies of the foregoing/attached ORDER AFTER HEARING by depositing the same, enclosed in sealed envelopes with postage thereon fully prepaid, in the United States Post Office at Woodland, California addressed as follows:

PATRICK M. SCLUSI  
NICHOLAS R. SWEENEY  
510 8<sup>TH</sup> STREET  
SACRAMENTO, CA 95814

HARRIET STEINER  
500 CAPITOL MALL STE 1700  
SACRAMENTO, CA 95814

SABRINGA V. TELLER  
555 CAPITOL MALL, STE 800  
SACRAMENTO, CA 95814

At the time of said mailing there was regular communication by United States Mail between the said place of mailing and the places addressed.

Dated: October 09, 2019

SHAWN C. LANDRY  
COURT EXECUTIVE OFFICER

By:

  
C. Guevara, Deputy Clerk